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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JP

DEPUTY

4 CASE UNSEALED PER ORDER OF COURT

7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA

9 June 2011 Grand Jury

10 UNITED STATES OF AMERICA, ) Case No. 12 CR 2599 BEN  
11 )  
12 Plaintiff, ) I N D I C T M E N T  
13 ) Title 18, U.S.C., Sec. 371 -  
14 v. ) Conspiracy; Title 18, U.S.C.,  
15 IRVING SCHWARTZ (1), ) Sec. 1347 - Health Care Fraud;  
16 JOSE MELENDEZ (2), ) Title 18, U.S.C., Sec. 1512 -  
17 ) Attempt to Tamper with a Witness;  
18 Defendants. ) Title 18, U.S.C., Sec. 2 - Aiding  
19 ) and Abetting; Title 18, U.S.C.,  
20 ) Sec. 982(a)(7) - Criminal  
21 ) Forfeiture

22 The grand jury charges:

23 INTRODUCTORY ALLEGATIONS

24 At all times pertinent to this Indictment:

25 THE DEFENDANTS AND OTHER PARTICIPANTS

26 1. Defendant IRVING SCHWARTZ ("SCHWARTZ") was a medical doctor  
27 who prescribed power wheelchairs and accessories to Medicare  
28 beneficiaries who lived in Imperial County, which is located within  
the Southern District of California.

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SMB:vp:San Diego  
6/26/12

1 MS

1       2. Defendant JOSE MELENDEZ was the owner and operator of  
2 Oceanside Medical Services ("Oceanside Medical"), a California  
3 business entity doing business at 2643 East Carson Street, Long Beach,  
4 California 90810. MELENDEZ, through Oceanside Medical, was engaged  
5 in the business of selling Durable Medical Equipment ("DME"),  
6 including power wheelchairs and accessories, to Medicare  
7 beneficiaries.

8       3.    Co-conspirator Gloria Hernandez (charged elsewhere) was a  
9 patient recruiter who located Medicare beneficiaries whose unique  
10 identification numbers could be used to file claims with Medicare for  
11 DME.

12       4. Co-conspirators Aristeo and Laura Tavares (charged  
13 elsewhere) were the joint owners and operators of A&L Medical Supply  
14 ("A&L"), a California business entity doing business at 3711 North  
15 Harbor Drive #B, Fullerton, California 92835. Aristeo and Laura  
16 Tavares, through A&L, were engaged in the business of selling DME,  
17 including power wheelchairs and accessories, to Medicare  
18 beneficiaries.

## THE MEDICARE PROGRAM

20       5. The Medicare Program ("Medicare") was a federal health care  
21 program, affecting commerce, that provided benefits to individuals who  
22 were over the age of 65 or disabled. Medicare was administered by the  
23 Centers for Medicare and Medicaid Services ("CMS"), a federal agency  
24 under the United States Department of Health and Human Services  
25 ("HHS"). Medicare was a "health care benefit program" as defined by  
26 Title 18, United States Code, Section 24(b), and a "Federal health  
27 care program," as defined by Title 42, United States Code,  
28 Section 1320a-7b(f).

1       6. Medicare was subdivided into multiple Parts. Medicare Part  
2 B covered, among other things, medically necessary physician services  
3 and outpatient care, including an individual's access to DME, such as  
4 power wheelchairs and accessories.

5       7. CMS contracted with private insurance carriers to process  
6 and pay Medicare claims. DME claims in Southern California were  
7 processed and paid by the Durable Medical Equipment Regional Carrier  
8 for Region D, which covers the Western United States.

9       8. Patients who qualified for Medicare benefits were commonly  
10 referred to as "beneficiaries." Each beneficiary was given a Health  
11 Identification Card ("HIC") containing a unique identification number.

12       9. DME companies, physicians and other healthcare providers  
13 that provided services to Medicare beneficiaries were referred to as  
14 Medicare "providers." To become eligible to participate in Medicare,  
15 a provider was required to submit an application in which he/she  
16 agreed to comply with all governing laws and regulations. Once  
17 approved by Medicare, a provider was assigned a "provider number."  
18 A health care provider with a provider number could file claims with  
19 Medicare to obtain reimbursement for services rendered to  
20 beneficiaries. Payments under the Medicare program were often made  
21 directly to providers, rather than to the beneficiaries.

22       10. Defendant IRVING SCHWARTZ first became a Medicare provider  
23 on or about January 1, 1988, and was issued a Medicare provider  
24 number.

25       11. Defendant JOSE MELENDEZ became a Medicare provider on or  
26 about June 16, 2005, and was issued a Medicare provider number.

27       //

28       //

1       12. Co-conspirator Aristeo Tavares became a Medicare provider  
2 on or about September 6, 2007, and was issued a Medicare provider  
3 number.

4       13. Medicare reimbursed DME companies and other health care  
5 providers for equipment and services rendered to beneficiaries.  
6 Medicare would only reimburse providers for DME and related items if  
7 the DME was prescribed by the beneficiary's physician and was  
8 medically necessary for the treatment of the beneficiary's illness or  
9 injury.

10      14. Under Medicare regulations, a power wheelchair was only  
11 considered medically necessary if: (1) the beneficiary had a mobility  
12 limitation that significantly impaired the beneficiary's ability to  
13 walk, feed, dress, or bathe; and (2) the beneficiary had so little  
14 upper body strength that he or she could not accomplish these  
15 activities by using a manual wheelchair, walker or cane.

16      15. To ensure that each beneficiary met these criteria, Medicare  
17 required a physician to conduct a face-to-face examination and provide  
18 a written evaluation about the beneficiary's mobility and his/her need  
19 for a power wheelchair. Only after conducting this face-to-face  
20 examination could a physician write a prescription for a power  
21 wheelchair. Medicare regulations required the records of the face-to-  
22 face examination and the power wheelchair prescription to be forwarded  
23 to the DME company within 45 days of completion of the face-to-face  
24 examination.

25      16. If a DME company filled a valid prescription and supplied  
26 a power wheelchair to a Medicare beneficiary, the DME company could  
27 submit a claim to Medicare for reimbursement. A Medicare claim for  
28 DME reimbursement was required to set forth, among other things, the

1 beneficiary's name and unique Medicare identification number, the  
2 equipment provided to the beneficiary, the date that the equipment was  
3 provided, the cost of the equipment, and the name and unique physician  
4 identification number of the physician who prescribed the equipment.

5       17. To receive reimbursement from Medicare, DME companies  
6 submitted or caused the submission of claims for payment for services  
7 to beneficiaries, either directly or through a billing company.  
8 Approved Medicare providers could submit claims on paper or  
9 electronically. When submitting a claim, the provider was required  
10 to certify: (1) that the contents of the claim were true, correct,  
11 and complete; (2) that the claim was prepared in compliance with the  
12 laws and regulations governing Medicare; and (3) that the equipment  
13 referred to in the claim was medically necessary.

14        18. To protect the integrity of Medicare, federal law prohibited  
15 doctors and DME companies from paying or receiving illegal  
16 remuneration, including kickbacks and bribes, in exchange for power  
17 wheelchair prescriptions that were billed to Medicare.

Count 1

**CONSPIRACY TO PAY AND RECEIVE HEALTH CARE KICKBACKS  
AND DEFRAUD MEDICARE**

[18 U.S.C. § 371]

22 19. Paragraphs 1 through 18 of the Introductory Allegations of  
23 this Indictment are realleged and incorporated by reference.

24       20. Beginning no later than in or about July 2007, and  
25 continuing until in or about September 2008, within the Southern  
26 District of California, and elsewhere, Defendants IRVING SCHWARTZ and  
27 JOSE MELENDEZ, together with Co-conspirators Hernandez, Aristeo  
28 Tavares and Laura Tavares (all charged elsewhere), and others known

1 and unknown to the Grand Jury, did knowingly and intentionally  
2 conspire together and with each other and with other persons known and  
3 unknown to the grand jury, to commit offenses against the United  
4 States as set forth below:

5                   a. To execute a material scheme to defraud a health care  
6 benefit program, that is, Medicare, and to obtain, by means of  
7 materially false and fraudulent pretenses, representations, promises,  
8 and omission and concealment of material facts, money and property  
9 owned by, and under the custody and control of, Medicare, in  
10 connection with the delivery of and payment for health care benefits,  
11 items and services, in violation of 18 U.S.C. § 1347; and

12                   b. To knowingly and wilfully solicit, pay, offer and  
13 receive remuneration, specifically kickbacks and bribes, directly and  
14 indirectly, overtly and covertly, in return for referring  
15 beneficiaries for the furnishing and arranging for the furnishing for  
16 any item and service for which payment may be made in whole or in part  
17 by a Federal health care program, in violation of 42 U.S.C. § 1320a-  
18 7b.

## **PURPOSE OF THE CONSPIRACY**

20       21. It was the purpose of the conspiracy for the Defendants and  
21 their Co-conspirators to unlawfully enrich themselves by, among other  
22 things, submitting and causing the submission of false and fraudulent  
23 claims to Medicare.

## THE MANNER AND MEANS OF THE CONSPIRACY

25       22. The manner and means by which the Defendants and their Co-  
26 conspirators sought to accomplish the objects of the conspiracy were,  
27 in substance, as follows:

28 //

1 a. Co-conspirator Hernandez would travel to the Southern  
2 District of California to recruit Medicare beneficiaries by offering  
3 free DME, including power wheelchairs, to beneficiaries who had no  
4 medical need for such equipment.

5 b. Defendant SCHWARTZ would travel with Co-conspirator  
6 Hernandez to the homes of Medicare beneficiaries in the Southern  
7 District of California, and would write false and fraudulent  
8 prescriptions for power wheelchairs and other DME ("power wheelchair  
9 prescriptions"), even though the DME was not medically necessary.

10 c. Defendant MELENDEZ and Co-conspirator Hernandez would  
11 pay bribes and kickbacks to Defendant SCHWARTZ in exchange for the  
12 fraudulent power wheelchair prescriptions written by Defendant  
13 SCHWARTZ.

14 d. Defendant MELENDEZ would sell some of the fraudulent  
15 power wheelchair prescriptions written by Defendant SCHWARTZ to Co-  
16 conspirators Aristeo and Laura Tavares.

17 e. Defendant MELENDEZ and Co-conspirators Aristeo and  
18 Laura Tavares would submit the fraudulent power wheelchair  
19 prescriptions to Medicare and claim reimbursement for approximately  
20 \$1,355,764 in false and fraudulent claims.

## OVERT ACTS

22        23. In furtherance of the conspiracy, and to accomplish its  
23 purpose, the following overt acts were committed, among others:

24 a. In or about October 2007, Defendant SCHWARTZ wrote a  
25 false and fraudulent prescription for a power wheelchair and  
26 accessories ("power wheelchair prescription") for Medicare beneficiary  
27 J.R.

28 //

1                   b.    In or about October 2007, Defendant SCHWARTZ sold the  
2 false and fraudulent power wheelchair prescription for J.R. to Co-  
3 conspirator Hernandez in exchange for a \$300 cash kickback.

4                   c.    In or about October 2007, Defendant MELENDEZ purchased  
5 J.R.'s false and fraudulent power wheelchair prescription from Co-  
6 conspirator Hernandez in exchange for a kickback of approximately  
7 \$1,000.

8                   d.    On or about October 31, 2007, Defendant MELENDEZ,  
9 knowing J.R.'s prescription to be false and fraudulent, submitted a  
10 false claim to Medicare for reimbursement of the power wheelchair and  
11 accessories.

12                  e.    In or about November 2007, Defendant SCHWARTZ wrote a  
13 false and fraudulent power wheelchair prescription for Medicare  
14 beneficiary E.L.

15                  f.    In or about November 2007, Defendant SCHWARTZ sold the  
16 false and fraudulent power wheelchair prescription for E.L. to Co-  
17 conspirator Hernandez in exchange for a \$300 cash kickback.

18                  g.    In or about November 2007, Defendant MELENDEZ purchased  
19 E.L.'s false and fraudulent power wheelchair prescription from Co-  
20 conspirator Hernandez in exchange for a kickback of approximately  
21 \$1,000.

22                  h.    On or about November 28, 2007, Defendant MELENDEZ,  
23 knowing E.L.'s prescription to be false and fraudulent, submitted a  
24 false claim to Medicare for reimbursement of the power wheelchair and  
25 accessories.

26                  i.    In or about December 2007, Defendant SCHWARTZ wrote a  
27 false and fraudulent power wheelchair prescription for Medicare  
28 beneficiary L.L.

4 k. In or about December 2007, Defendant MELENDEZ purchased  
5 L.L.'s false and fraudulent power wheelchair prescription from Co-  
6 conspirator Hernandez in exchange for a kickback of approximately  
7 \$1,000.

8                   1. On or about December 7, 2007, Defendant MELENDEZ,  
9 knowing L.L.'s prescription to be false and fraudulent, submitted a  
10 false claim to Medicare for reimbursement of the power wheelchair and  
11 accessories.

15 n. In or about December 2007, Defendant SCHWARTZ sold the  
16 false and fraudulent power wheelchair prescription for H.U. to Co-  
17 conspirator Hernandez in exchange for a \$300 cash kickback.

18 o. In or about December 2007, Defendant MELENDEZ purchased  
19 H.U.'s false and fraudulent power wheelchair prescription from Co-  
20 conspirator Hernandez in exchange for a kickback of approximately  
21 \$1,000.

22 p. On or about December 7, 2007, Defendant MELENDEZ,  
23 knowing H.U.'s prescription to be false and fraudulent, submitted a  
24 false claim to Medicare for reimbursement of the power wheelchair and  
25 accessories.

26 q. In or about December 2007, Defendant SCHWARTZ wrote a  
27 false and fraudulent power wheelchair prescription for Medicare  
28 beneficiary M.R.

1                   r.    In or about December 2007, Defendant SCHWARTZ sold the  
2 false and fraudulent power wheelchair prescription for M.R. to Co-  
3 conspirator Hernandez in exchange for a \$300 cash kickback.

4                   s.    In or about December 2007, Defendant MELENDEZ purchased  
5 M.R.'s false and fraudulent power wheelchair prescription from Co-  
6 conspirator Hernandez in exchange for a kickback of approximately  
7 \$1,000.

8                   t.    On or about December 12, 2007, Defendant MELENDEZ,  
9 knowing M.R.'s prescription to be false and fraudulent, submitted a  
10 false claim to Medicare for reimbursement of the power wheelchair and  
11 accessories.

12                  u.    In or about January 2008, Defendant SCHWARTZ wrote a  
13 false and fraudulent power wheelchair prescription for Medicare  
14 beneficiary J.C.

15                  v.    In or about January 2008, Defendant SCHWARTZ sold the  
16 false and fraudulent power wheelchair prescription for J.C. to Co-  
17 conspirator Hernandez in exchange for a \$300 cash kickback.

18                  w.    In or about January 2008, Defendant MELENDEZ purchased  
19 J.C.'s false and fraudulent power wheelchair prescription from Co-  
20 conspirator Hernandez in exchange for a kickback of approximately  
21 \$1,000.

22                  x.    In or about January 2008, Defendant MELENDEZ sold  
23 J.C.'s false and fraudulent power wheelchair prescription to Co-  
24 conspirators Aristeo and Laura Tavares.

25                  y.    On or about January 5, 2008, Co-conspirators Aristeo  
26 and Laura Tavares, knowing J.C.'s prescription to be false and  
27 fraudulent, submitted a false claim to Medicare for reimbursement of  
28 the power wheelchair and accessories.

1                   z. In or about January 2008, Defendant SCHWARTZ wrote a  
2 false and fraudulent power wheelchair prescription for Medicare  
3 beneficiary S.R.

4                   aa. In or about January 2008, Defendant SCHWARTZ sold the  
5 false and fraudulent power wheelchair prescription for S.R. to Co-  
6 conspirator Hernandez in exchange for a \$300 cash kickback.

7                   bb. In or about January 2008, Defendant MELENDEZ purchased  
8 S.R.'s false and fraudulent power wheelchair prescription from Co-  
9 conspirator Hernandez in exchange for a kickback of approximately  
10 \$1,000.

11                  cc. On or about January 10, 2008, Defendant MELENDEZ,  
12 knowing S.R.'s prescription to be false and fraudulent, submitted a  
13 false claim to Medicare for reimbursement of the power wheelchair and  
14 accessories.

15                  dd. In or about January 2008, Defendant SCHWARTZ wrote a  
16 false and fraudulent power wheelchair prescription for Medicare  
17 beneficiary A.R.

18                  ee. In or about January 2008, Defendant SCHWARTZ sold the  
19 false and fraudulent power wheelchair prescription for A.R. to Co-  
20 conspirator Hernandez in exchange for a \$300 cash kickback.

21                  ff. In or about January 2008, Defendant MELENDEZ purchased  
22 A.R.'s false and fraudulent power wheelchair prescription from Co-  
23 conspirator Hernandez in exchange for a kickback of approximately  
24 \$1,000.

25                  gg. On or about January 10, 2008, Defendant MELENDEZ,  
26 knowing A.R.'s prescription to be false and fraudulent, submitted a  
27 claim to Medicare for reimbursement of the power wheelchair and  
28 accessories.

1                   hh. In or about January 2008, Defendant SCHWARTZ wrote a  
2 false and fraudulent power wheelchair prescription for Medicare  
3 beneficiary A.R.

4                   ii. In or about January 2008, Defendant SCHWARTZ sold the  
5 false and fraudulent power wheelchair prescription for A.R. to Co-  
6 conspirator Hernandez in exchange for a \$300 cash kickback.

7                   jj. In or about January 2008, Defendant MELENDEZ purchased  
8 A.R.'s false and fraudulent power wheelchair prescription from Co-  
9 Conspirator Hernandez in exchange for a kickback of approximately  
10 \$1,000.

11                  kk. On or about January 10, 2008, Defendant MELENDEZ,  
12 knowing A.R.'s prescription to be false and fraudulent, submitted a  
13 claim to Medicare for reimbursement of the power wheelchair and  
14 accessories.

15                  ll. In or about April 2008, Defendant SCHWARTZ wrote a  
16 false and fraudulent power wheelchair prescription for Medicare  
17 beneficiary M.A.

18                  mm. In or about April 2008, Defendant SCHWARTZ sold the  
19 false and fraudulent power wheelchair prescription for M.A. to Co-  
20 conspirator Hernandez in exchange for a \$300 cash kickback.

21                  nn. In or about April 2008, Defendant MELENDEZ purchased  
22 M.A.'s false and fraudulent power wheelchair prescription from Co-  
23 conspirator Hernandez in exchange for a kickback of approximately  
24 \$1,000.

25                  oo. In or about April 2008, Defendant MELENDEZ sold M.A.'s  
26 false and fraudulent prescription to Co-conspirators Aristeo and Laura  
27 Tavares.

28 //

1 pp. On or about April 3, 2008, Co-conspirators Aristeo and  
2 Laura Tavares, knowing M.A.'s prescription to be false and fraudulent,  
3 submitted a claim to Medicare for reimbursement of the power  
4 wheelchair and accessories.

5 All in violation of Title 18, United States Code, Section 371.

6 Counts 2-11

7 HEALTH CARE FRAUD

8 [18 U.S.C. §§ 1347 and 2]

9 24. Paragraphs 1 through 18 of the Introductory Allegations of  
10 this Indictment are realleged and incorporated by reference.

11 25. Beginning no later than in or about July 2007, and  
12 continuing until in or about September 2008, within the Southern  
13 District of California, and elsewhere, Defendant JOSE MELENDEZ, and  
14 others known and unknown to the Grand Jury, in connection with the  
15 delivery of and payment for health care benefits, items, and services,  
16 devised and intended to devise a material scheme and artifice to  
17 defraud a healthcare benefit program, namely Medicare, and to obtain  
18 money from Medicare by means of materially false and fraudulent  
19 pretenses, representations, promises, and omission and concealment of  
20 material facts.

21 THE SCHEME AND ARTIFICE

22 26. The fraudulent scheme operated, in substance, in the manner  
23 described in Paragraph 22 of this Indictment, which is realleged and  
24 incorporated by reference as though fully set forth herein.

25 ACTS IN EXECUTION OF THE SCHEME AND ARTIFICE

26 27. On or about the dates set forth below, within the Southern  
27 District of California and elsewhere, Defendant MELENDEZ and others  
28 known and unknown to the grand jury, knowingly and willfully executed

1 the scheme to defraud described above, by submitting and causing to  
 2 be submitted to Medicare the following false and fraudulent claims for  
 3 power wheelchairs and accessories:

Count	Date Claim Submitted	Medicare Beneficiary	Description of Items Billed	Amount Billed	Claim Number
2.	10/31/2007	J.R.	Power Wheelchair and Accessories	\$5,865	107306822482000
3.	11/28/2007	E.L.	Power Wheelchair and Accessories	\$5,865	107338889471000
4.	12/07/2007	L.L.	Power Wheelchair and Accessories	\$5,865	107344825119000
5.	12/07/2007	H.U.	Power Wheelchair and Accessories	\$5,865	107344825118000
6.	12/12/2007	M.R.	Power Wheelchair and Accessories	\$5,865	107348822035000
7.	01/05/2008	J.C.	Power Wheelchair and Accessories	\$5,865	108029817604000
8.	1/10/2008	S.R.	Power Wheelchair and Accessories	\$5,865	108011822601000
9.	1/10/2008	A.R.	Power Wheelchair and Accessories	\$5,865	108011822599000
10.	01/10/2008	A.R.	Power Wheelchair and Accessories	\$5,865	108011822595000
11.	04/03/2008	M.A.	Power Wheelchair and Accessories	\$5,865	108095818312000

25 All in violation of Title 18, United States Code, Section 1347.

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Count 12

**ATTEMPT TO TAMPER WITH A WITNESS**

[18 U.S.C. § 1512]

4       28. Paragraphs 1 through 4 of the Introductory Allegations of  
5 this Indictment are realleged and incorporated by reference.

6       29. On or about January 11, 2012, Defendant JOSE MELENDEZ did  
7 knowingly and corruptly attempt to persuade another person, namely Co-  
8 conspirator Aristeo Tavares, to provide false and misleading  
9 information to the Federal Bureau of Investigation, with the intent  
10 to hinder, delay and prevent communication to a law enforcement  
11 officer of the United States of information relating to the commission  
12 of a federal offense; in violation of Title 18, United States Code,  
13 Section 1512(b) (3).

## **CRIMINAL FORFEITURE ALLEGATIONS**

[18 U.S.C. § 982(a)(7)]

16       30. Paragraphs 1 through 27 of this Indictment are realleged and  
17 incorporated as if fully set forth herein for the purpose of alleging  
18 forfeiture pursuant to Title 18, United States Code, Section  
19 982(a)(7).

20       31. Upon conviction of the offenses of Conspiracy to Pay and  
21 Receive Kickbacks and Defraud Medicare, and Health Care Fraud as  
22 alleged in Counts 1-11, Defendants SCHWARTZ and MELENDEZ shall,  
23 pursuant to Title 18, United States Code, Section 982(a)(7), forfeit  
24 to the United States: (a) all right, title, and interest in any  
25 property, real or personal, that constitutes or is derived, directly  
26 or indirectly, from gross proceeds traceable to the commission of such  
27 offenses; and (b) a sum of money equal to the total amount of gross  
28 proceeds derived, directly or indirectly, from such offenses.

1           32. If any of the above-described forfeitable property, as a  
2 result of any act or omission of Defendants SCHWARTZ and MELENDEZ: (a)  
3 cannot be located upon the exercise of due diligence; (b) has been  
4 transferred or sold to, or deposited with, a third party; (c) has been  
5 placed beyond the jurisdiction of the Court; (d) has been  
6 substantially diminished in value; or (e) has been commingled with  
7 other property which cannot be divided without difficulty; it is the  
8 intent of the United States, pursuant to Title 21, United States Code,  
9 Section 853(p) and Title 18, United States Code, Section 982(b), to  
10 seek forfeiture of any other property of Defendants SCHWARTZ and  
11 MELENDEZ up to the value of the forfeitable property described above.

All pursuant to Title 18, United States Code, Section 982(a)(7).

DATED: June 27, 2012.

A TRUE BILL:

Foreperson

LAURA E. DUFFY  
United States Attorney

By: Shireen M. Becker  
SHIREEN M. BECKER  
Assistant U.S. Attorney